

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 507  
Title 14, California Code of Regulations  
Re: Provisions Relating to the Take of Migratory Game Birds

- I. Date of Initial Statement of Reasons: March 18, 2010
- II. Date of Pre-Adoption Statement of Reasons: N/A
- III. Date of Final Statement of Reasons: August 19, 2010
- IV. Dates and Locations of Scheduled Hearings:
  - (a) Notice Hearing: Date: May 5, 2010  
Location: Stockton, CA
  - (b) Discussion Hearing: Date: June 24, 2010  
Location: Folsom, CA
  - (c) Adoption Hearing: Date: August 18, 2010  
Location: Sacramento, CA Teleconference

- V. Update:

No modifications were made to the originally proposed language of the Initial Statement of Reasons.

At its August 18, 2010 meeting, the Commission adopted the regulation as proposed.

- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:

Comment 1: Anthony Macaluso, written and oral comments received at the Commission's May 5, 2010 meeting.

Mr. Macaluso proposed that the restriction on spinning wing decoys be lifted. He said that the hunters in the field are not following the current restriction on the use of the decoys.

Response 1: Prior to adoption of the current regulation in 2001, the Department conducted studies on the effects of the mechanically operated

spinning wing decoys on the duck population. The results of the studies showed that the proper restrictions for the use of mechanically operated spinning decoys should be from the opening of the duck season until November 30. Spinning wing decoys are believed to increase mallard harvest early in the season when local mallards are the only mallards in the state. Prohibiting spinning wing decoys until December 1 should maintain early season local mallard harvest to desired levels while allowing hunters to use them later in the season.

Comment 2: Roger S. Mammen, Lower Sherman Island Duck Club, letter dated March 3, 2009.

Mr. Mammen recommends that the Commission prohibit the possession in the field of spinning wing decoys between the start of the waterfowl season and November 30.

Response 2: The current law prohibits the use of the spinning devices not the possession during the closed portion of the season. In order to prohibit the possession of the devices in the field, there would need to be an added definition in regulation of what "in the field" actually is. This restriction would generate more regulations and enforcement effort for enforcement staff. Enforcement state wide has not seen high usage of the prohibited spinning wing devices during the closed time of the season.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:  
California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No reasonable alternatives were identified.

(b) No Change Alternative:

The no change alternative was considered but rejected due to the need for clarification in the existing language to better meet the intention of the regulation.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This proposal is a clarification in language only and does not prohibit any current legal devices.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

(h) Effect on Housing Costs:

None.

### Updated Informative Digest/Policy Statement Overview

Subsection 507 (c) of Title 14, CCR, prohibits the use of electronic or 'mechanically operated spinning blade devices or spinning wing decoys when attempting to take waterfowl between the start of the season and November 30th." The terms "mechanical" and "spinning blade devices" have caused confusion for hunters, as well as enforcement, as new decoys have been developed. "Mechanical" can include man-powered devices e.g. pull chords, spinning reels etc. "Spinning blades" include propellers below the surface of the water that are common among waterfowl decoys, but clearly not the target of the prohibition. Even the term "spinning" is not clear as some decoys have wings that do not spin completely around an axis but pivot back and forth. The wording of the subsection dealing with spinning wing devices needs to be simplified so both enforcement personnel and the public understand the gear restriction.

The Department is proposing that the Commission clarify that the prohibited devices are devices that are either electronically powered, or activated by anything other than natural wind, to directly or indirectly cause rotation of decoy wings or blades that simulate wings.

**At its August 18, 2010 teleconference meeting, the Commission adopted the regulations as proposed.**

## Regulatory Language

### **§507. Provisions Related to the Taking of Migratory Game Birds.**

(a) Authorized Methods. Only the following methods may be used to take migratory game birds:

(1) Falconry.

(2) Bow and Arrows or Crossbows. Only arrows or crossbows bolts with flu- flu fletching may be used except that conventionally fletched arrows may be used to take waterfowl sitting on the water from scullboats or similar watercraft. Archers hunting during any archery season may not possess a firearm while in the field engaged in archery hunting.

(3) Muzzle-loading Shotguns.

(4) Shotguns 10 Gauge or Smaller. Shotguns 10 gauge or smaller using shot shells only and incapable of holding more than three shells in the magazine and chamber combined may be used. except no shotgun larger than 12 gauge shall be used in areas open to hunting on, over or adjacent to the waters of Morro Bay, San Luis Obispo County. If a plug is used to reduce the capacity of a magazine to fulfill the requirements of this section, the plug must be of one piece construction incapable of removal without disassembling the gun. Shotgun shells may not be used or possessed that contain shot size larger than No. BB in lead or T shot in steel or other nontoxic shot approved by the U.S. Fish and Wildlife Service. All shot shall be loose in the shell.

(b) Use of Dogs. Dogs may be used to take and retrieve migratory game birds.

(c) Prohibition on Electronically or Mechanically-operated Devices. Electronic or mechanically-operated calling or sound-reproducing devices are prohibited when attempting to take migratory game birds. ~~It is unlawful to use electronic or mechanically-operated spinning blade devices or spinning wing decoys when attempting to take waterfowl between the start of waterfowl season and November 30. For the purposes of this regulation, wind powered spinning blade devices and kites are not prohibited.~~ It is unlawful to use devices that are either electronically-powered, or activated by anything other than natural wind, to directly or indirectly cause rotation of decoy wings or blades that simulate wings, when attempting to take waterfowl between the start of the waterfowl season and November 30.

(d) Live Decoy Prohibition. The use of live decoys is prohibited when attempting to take migratory game birds.

Note: Authority cited: Section 355, Fish and Game Code. Reference: Sections 355, 356 and 3005, Fish and Game Code.